

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 14, 2001  
at 9:00 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Walter McNutt (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Cecile Tropila, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 219, HB 146, HJ 17, HB 151,  
3/9/2001

#### **HEARING ON HB 219**

**Sponsor:** REP. JOE MCKENNEY, HD 49, GREAT FALLS

**Proponents:** Ronna Christman, MT Petroleum Marketers Assoc.  
Tim Sweeney, Shamrock Stores, Missoula  
Richard Clark, Kwik-Way Stores Inc., Billings

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. JOE MCKENNEY, HD 49, GREAT FALLS,** said this bill enacts the suspension of a driver's license for an individual who steals motor fuel, commonly called drive-offs. He stated this bill acts as a deterrent warning drivers if they drive off without paying for their fuel they may lose their driving privileges. He explained theft and how it becomes an overhead expense to the businesses involved.

**Proponents' Testimony:**

**Ronna Christman, MT. Petroleum Marketers Assoc.,** gave a background of the Petroleum Marketers Association and explained the thefts of gasoline from motorists. She handed out information on drive-offs **EXHIBIT(jus58a01)**. She mentioned in the past couple of years this issue has escalated into a significant problem due to the rising cost of motor fuel. A survey was done by the association this past year and they received good information towards these incidences. She pointed out that law enforcement takes this issue lightly and this bill offers language dealing with penalties for the suspension of drivers' licenses. She said some states have this law in place and are looking into enacting this law. She referred to the handout and explained the state of Michigan enforcing this type of law.

**Tim Sweeney, Shamrock Stores, Missoula,** stated the gas drive-offs are increasing by percentages over the past five years. He explained how much money per gallon these stores receive and how much they lose from gasoline drive-offs.

**Richard Clark, Kwik-Way Stores, Inc., Billings,** explained the loss to the stores from drive-offs. He said they do recognize people from the community who may forget to pay and they return. He believed this bill would help as a deterrent with threatening the loss of the drivers licenses.

**Opponents' Testimony:     None**

**Questions from Committee Members and Responses:**

**SEN. DUANE GRIMES** asked what "upon proper authority" within the bill meant. **REP. MCKENNEY** said proper authority would be the judicial branch upon conviction of the crime.

**SEN. GRIMES** asked how long the process issue takes effect. **REP. MCKENNEY** felt it to be a long process due to court systems.

**CHAIRMAN LORENTS GROSFIELD** asked about the impact of using credit cards. **Tim Sweeney** said this does affect the system and the

employees inside the booths do know who is using the credit card at the pump because the transaction comes up on the screens. He felt if using credit cards, this would be a small percentage of people driving off.

**CHAIRMAN GROSFIELD** asked if there was any problem with using a credit card and not signing for it. **Tim Sweeney** said the pumps are set to a certain limit for a transaction to be used by credit card. The possibility of a stolen credit card can only be used to a certain limit and he mentioned incidences where copies of the computer printouts showed the transaction actually happened.

**CHAIRMAN GROSFIELD** asked about people who pump gas and then add extra when it shuts off and enter the store and have two different charges. **Tim Sweeney** explained the computer system takes one transaction as completed when the pump has to be back in the holster before another transaction can happen.

**SEN. GRIMES** said people sometimes forget to pay because they have too many things going on i.e. kids, jobs and he asked what happens with unintentional drive-offs. **Tim Sweeney** said there are good regular customers who come back because they simply forgot.

**Closing by Sponsor:**

**REP. JOE MCKENNEY, HD 49, GREAT FALLS**, responded to **SEN. GRIMES** last question by stating forgetfulness of people, unintentional would not be a criminal activity. He said this is a simple bill tightening up the penalties for this crime and he urged a do pass motion.

**HEARING ON HB 146**

**Sponsor:** **REP. JIM SHOCKLEY, HD 61, VICTOR**

**Proponents:** **Mike Ferriter, Administrator Community  
Corrections, Dept. of Corrections  
Matt Robertson, Special Assistant Attorney  
General, Dept. of Corrections  
Richard Meager, Chief Probation Officer  
Carol Stratemeyer, Chief Juvenile Probation  
Officer, Hamilton  
John Larson, District Judge, Missoula**

**Opponents:** **Sandy Oitzinger, MT. Juvenile Probation Officers  
Assoc.**

Joy Mariska, Director Court Services, Yellowstone  
County  
Glen Welch, Chief Probation Officer, Missoula  
Bill Kennedy, Yellowstone County Commissioners  
Gary Loshesky, Chief Juvenile Probation Officer,  
Deer Lodge  
Bob Peake, Juvenile Probation Officer, Havre  
Lawrence Martin, Chief Juvenile Probation Officer,  
Livingston

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, handed out pilot project information **EXHIBIT(jus58a02)**. He stated this bill encourages proper use of funding for youth courts and how each district should live within their budgets. He talked about the pilot projects in counties and explained the budget system.

Proponents' Testimony:

Mike Ferriter, Administrator Community Corrections Division, Dept. of Corrections, handed out the pilot project report **EXHIBIT(jus58a03)** and explained the report in detail. He focused his testimony on the juvenile delinquency intervention program and felt this bill impacts how the system should work for the state.

*{Tape 1; Side B}*

Matt Robertson, Special Assistant Attorney General, Dept. of Corrections, drafted the legislation of this bill and mentioned changes within the bill and the need for a budgeting process for youth courts.

Richard Meagher, Chief Probation Officer, said his district was the first to use the pilot project. He talked about the how surplus funds were used over the years and felt the pilot project serves the system well. He explained youth incidences and how treatment could be afforded through this budgeting process.

Carol Stratemeyer, Chief Juvenile Probation Officer, Hamilton, handed in her testimony **EXHIBIT(jus58a04)**.

John Larson, District Judge, Missoula, handed in a memo to be used for language changes in the bill **EXHIBIT(jus58a05)**. He said the pilot projects offers ways to deal with complex youth and allows for good treatment methods. He explained the language

changes relating to the sections of the Youth Court Act, 15-12 and 15-13.

**Opponents' Testimony:**

**Sandy Oitzinger, MT. Juvenile Probation Officers Assoc.**, handed out opposition letters **EXHIBIT(jus58a06)**. She felt the project to be immature in its nature of use. She stated funding issues should be resolved before a project like this can implemented. She pointed out this bill to be discretionary. She said there were problems involved with this project that would not be effective for all areas of Montana.

**Joy Mariska, Director Court Services, Yellowstone County**, talked about the troubled youth in communities. She felt this bill to be an expensive cost and the pilot project would be a burden in districts. She said this bill is dangerous and currently there is a struggle of budgeting, but if this bill was passed it would increase the struggle.

**Glen Welch, Chief Probation Officer, Missoula**, felt this bill to have many loose ends. He said this is a youth court placement budget and money cannot be spent if it is not there. He alleged where the funds should be located and the budgets should be mandated for youth courts. He thought there would be a lack of probation placements if this bill were to pass.

***{Tape 2; Side A}***

**Bill Kennedy, Yellowstone County Commissioners**, commented on developing local services and he mentioned funding problems that would detour youth into juvenile systems. He said this pilot program doesn't allocate funds properly.

**Gary Loshesky, Chief Juvenile Probation Officer, Deer Lodge**, said the problem in his counties deal with families adding to the per capita of juveniles. He felt the amount of money needed for his area would be far over spent. He said if the money was allocated or based on the population then his area would be on the losing end.

**Bob Peake, Juvenile Probation Officer, Havre**, mentioned allocations within districts and felt the Department of Corrections would have the final say with the transferring of responsibility. He explained types of offenses and pointed out the contingency fund involved with this pilot project. Placement of youth currently are full and there should be places for these youth to go. He asked the committee to consider the bill

sponsored by **SEN. WATERMAN** that would assist in options for this type of project.

**Lawrence Martin, Chief Probation Officer, Livingston**, felt this project to be unrealistic in mandating participation for each district of the state. He talked about placement funding for programs and how this can be tracked in some areas. He believed additional staff would be needed and this bill would then be expensive to use.

**Questions from Committee Members and Responses:**

**SEN. JERRY O'NEIL** asked how long the Riverside Youth Correction Facility had been in use. **REP. SHOCKLEY** said Riverside is renaming the facility. **Mike Ferriter** explained when Riverside was established to serve female offenders as the counter part of Pine Hills.

**SEN. O'NEIL** asked if jurisdiction of the court would be terminated. **REP. SHOCKLEY** said it allows the jurisdiction to continue if the youth was put into a facility and then released.

**SEN. O'NEIL** asked if there were any times the court would want to terminate jurisdiction. **REP. SHOCKLEY** said this allows the court to keep it if needed.

**SEN. O'NEIL** asked if this language wouldn't preclude them from terminating it. **REP. SHOCKLEY** answered no.

**SEN. GRIMES** asked about language changes and if it made it subject to review by a cost containment panel. **REP. SHOCKLEY** said if the youth court exceeds its budget it can then appeal to the cost containment panel. He explained the justification and how the budgets would be provided. **Judge Larson** said this deals with any dispositional order, but there is an issue with any other disposition because these are troubled youth. He talked about child and family services offering support.

***{Tape 2; Side B}***

**CHAIRMAN GROSFIELD** said the amendment allows judges more authority and he asked if this allows a state entity involved. **Judge Larson** said it doesn't limit any agency with responsibility to youth.

**CHAIRMAN GROSFIELD** asked how the amendment interrelates with Section 4 of the bill. **Judge Larson** said if enough agencies with

resources available would treat the youth then it could apply with that cap.

**CHAIRMAN GROSFIELD** asked about resources agencies would have available. **Judge Larson** said a hearing could be held for what resources are available and they know what they can work with.

**SEN. RIC HOLDEN** pointed out the program has been set up in Glendive. He asked if the district goes over their budget do they ask for more money. **Bill Kennedy** said if a court system went over their budget they would have to return mid-year to the board of county commissioners and ask for an allocation of dollars to settle the claims.

**SEN. GRIMES** asked if allocations were prorated and what the intentions of the determination of funds were. **Bill Kennedy** pointed to Section E of the pilot project report and explained what had been done in the past based on population of youth under age of 18 in each county.

**SEN. GRIMES** asked if anything dealing with the programs change in conjunction with regard to the committees operate and function. **Mike Ferriter** said the youth placement committee is already in statute. He said this bill changes the leadership of the committee and ownership.

**SEN. HOLDEN** referred to Section E in the reports and asked about the allocation of funds. **Mike Ferriter** said in previous fiscal years that is how the allocations were done.

**SEN. HOLDEN** asked if the funding formula would only provide half of what is being spent. **Mike Ferriter** said he hears plenty of times there is never enough money. He said this is the allotment they have and that is how they do the distribution.

**SEN. HOLDEN** referred to the list of areas and wondered how money could be allotted to these areas. **Mike Ferriter** said this is the distribution based on the population. He said the pilot concept generates lower cost services, develop and utilize lower cost services and use local services.

**SEN. HOLDEN** felt a youth problem wasn't a big issue in some of these smaller areas compared to other areas. He asked where the other half of the money to contain the program comes from. **Mike Ferriter** said Cascade County had been a participant in the pilot project over the past two years and they have overspent their budget. He added Cascade County has remarkably reduced it and have moved in the right direction.

**SEN. HOLDEN** said it looks like the pilot project was a failure in Cascade County. He felt an amendment was needed for any crisis situations that may arise with this issue. **Mike Ferriter** said there is more current data and he pointed out nine of the eleven pilot projects were successful.

**SEN. O'NEIL** asked if the court was precluded from consulting with the cost containment panel. **REP. SHOCKLEY** didn't think the court would be.

**SEN. O'NEIL** asked who determines what funds would be allocated. **REP. SHOCKLEY** understood the Department of Corrections would decide what the budgets would be. **Joe Williams, Department of Corrections** said the allocation method is used for the at-risk youth statewide. He said each issue is reviewed and the legislature has the final say with allocations of juvenile placement funds.

**SEN. O'NEIL** asked if this would take into consideration more at-risk youth in certain areas. **Joe Williams** said it depends upon the survey for those areas.

*{Tape 3; Side A}*

**SEN. O'NEIL** asked if adjacent areas could work together and share the funding. **Mike Ferriter** said the district is usually made up of several counties. He said it would be to develop alternative programming.

**SEN. O'NEIL** asked about a case that could be very difficult. **Mike Ferriter** answered by saying the cost containment committee is used for difficult youths.

**SEN. O'NEIL** asked what branch of government this would be under. **Mike Ferriter** referred to page 22 of the bill and explained the cost containment panel and how they are appointed to the position.

**CHAIRMAN GROSFIELD** asked about the funding, from Section E of the report. **Mike Ferriter** said Section E represents the fiscal year allocation. He handed out a projected fiscal surplus and deficit information **EXHIBIT(jus58a07)**.

**CHAIRMAN GROSFIELD** asked about the pattern of funding. **Mike Ferriter** said the original bill had asked for a statutory appropriation of \$1.6 million. He said there may not be enough money, but they are trying to figure this issue out from this bill.



**CHAIRMAN GROSFIELD** wondered with the unpredictable numbers there should be smaller allocations given to the districts and allow the contingency fund to be bigger. **Mike Ferriter** agreed and said the lower districts would have less funds and less availability to develop a surplus.

**SEN. HOLDEN** referred to page 22 of the bill and pointed out the professionals on the cost containment panel who spend taxpayer money. **Mike Ferriter** said this group is placed in the bill because it is a group of peers.

**SEN. HOLDEN** said once and awhile this cost containment committee would say no and asked if this was correct. **Mike Ferriter** said he doesn't see it happen very often.

**CHAIRMAN GROSFIELD** asked where they \$400,000 came from for the fund. **Bob Peake** answered it came from the Department of Corrections from the allotted allocations.

**CHAIRMAN GROSFIELD** asked for more information to be given in regard to Section E of the report, **Mike Ferriter** said yes, he would.

**CHAIRMAN GROSFIELD** asked if Pine Hills has become a default for youth we can't afford. He also asked about **SEN. WATERMAN's** bill and how this bill would be affected by that one. **REP. SHOCKLEY** thought Pine Hills would be the default and the bill of **SEN. WATERMAN** is in the house judiciary.

**Closing by Sponsor:**

**REP. JIM SHOCKLEY, HD 61, VICTOR**, closed by stating there is never enough funding for areas needed. He suggested the youth courts should try the pilot programs. He said financial specialists for these pilot programs would remain in place and out of state placements are not favored within this bill. He felt this bill is an attempt to solve the problems involved with the youth system and by making budgets for these problems would assist the programs.

**HEARING ON HJ 17**

**Sponsor:** **REP. BRAD NEWMAN, HD 38, BUTTE**

**Proponents:** **Jim Oppedahl, Executive Director, Board of Crime Control**

**Opponents:**     None

**Opening Statement by Sponsor:**

**REP. BRAD NEWMAN, HD 38, BUTTE,** stated this resolution deals with how the state is currently involved with three detention juvenile activities. He pointed out a performance audit that was previously done to allow a study of monitoring these facilities. He said this resolution allows for an interim study to monitor and implement these programs. He also explained the history of the Board of Crime Control and how they assist with these programs.

*{Tape 3; Side B}*

**Proponents' Testimony:**

**Jim Oppedahl, Executive Director, Board of Crime Control,** talked about the Board of Crime Control and how this department began. He thought a broader discussion of juvenile detention issues was needed and this resolution would offer that.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**CHAIRMAN GROSFIELD** asked about the involvement of specific agencies. **REP. NEWMAN** commented the specific departments and various youth probation places that need to be involved in this study. He said having an interim study would utilize staff resources already in place. He mentioned if an amendment addressing the appropriate parties would be greatly well taken for this issue.

**CHAIRMAN GROSFIELD** asked if the purpose of the study was to respond to the issues raised in the performance audit. **REP. NEWMAN** said the Board of Crime Control requested this study to possibly leave the compliance monitoring.

**CHAIRMAN GROSFIELD** wanted a response from the Department of Corrections regarding the involvement on their behalf. **Matt Robertson, Department of Corrections,** said they do juvenile licensing and said the department would be willing to participate and assist in evaluating where juvenile detention compliance monitoring should be.

**Closing by Sponsor:**

**REP. BRAD NEWMAN, HD 38, BUTTE**, briefed the juvenile detention centers and the funding. He explained this issue wasn't the responsibility of the Board of Crime Control. He felt they should reexamine assumptions made under current statutes and the priorities placed on both state and federal juvenile detention.

**HEARING ON HB 151**

**Sponsor:**       **REP. BRAD NEWMAN, HD 38, BUTTE**

**Proponents:**     **Mary Fay, Department of Corrections**  
                      **Valarie Wilson, Attorney, Jefferson County**  
                      **Chad Field, Department of Corrections**  
                      **Diana Liebinger Koch, Department of Corrections**

**Opponents:**       **None**

**Opening Statement by Sponsor:**

**REP. BRAD NEWMAN, HD 38, BUTTE**, pointed out areas of the bill where language had been changed for clarification. He mentioned the statutes 42-18-203 and 46-23-011 in the codes that conflict with the disparity. He talked about an incident these codes affected and how the court awarded the defendant needed intervention and the defendant did not complete the treatment. He felt the judge should have had a clause to use for the defendant to go through. He felt problems were occurring with the Department of Corrections and there was not enough time to work with this issue. He felt by removing the misdemeanor language from the statutes it would help address the disparity between the statutes.

***{Tape 4; Side A}***

**Proponents' Testimony:**

**Mary Fay, Department of Corrections**, handed in her testimony **EXHIBIT(jus58a08)**.

**Valarie Wilson, Attorney, Jefferson County**, believed the provision of this bill clarifying the contradiction of the statutes was very important. She explained an incident of an offender and what the offender's prison time was. She pointed out sections of the statutes and compared the differences. She asked for the committee's support of the bill.

**Chad Field, Department of Corrections**, explained an incident with an offender and how this bill effects these issues. He felt the

offenders are in need of treatment and this bill addresses the risks needed before a violation occurs.

**Diana Liebinger-Koch, Department of Corrections**, handed out a memo of law **EXHIBIT(jus58a09)**. She handed out another memo/testimony **EXHIBIT(jus58a10)**. She also handed out a letter from the County Attorneys Association **EXHIBIT(jus58a11)**.

*{Tape 4; Side B}*

Opponents' Testimony: None

Questions from Committee Members and Responses:

**SEN. DOHERTY** asked if there were some misdemeanors that need pre-sentencing for. **Mary Fay** felt all misdemeanors should receive pre-sentencing investigation completed on them. She said there is nothing in the statute at this time to supervise them.

**SEN. DOHERTY** asked if the bill does not violate double jeopardy, modifying the circumstances. **Diana Liebinger-Koch** answered that is correct and added they are dealing with a one criminal sentence, modifying the conditions by not imposing another punishment on the offender.

**SEN. DOHERTY** asked about the ex post facto issue and what was the rational. **Diana Liebinger-Koch** explained how the judge promote violations. She said the ex post facto issues do not add substantially to the measure of punishment.

**SEN. GRIMES** asked if the double jeopardy issue was a section in the constitution or was it more defined by statute. **Diana Liebinger-Koch** said the double jeopardy provision is found both in the Montana Constitution and the United States Constitution.

**SEN. GRIMES** asked if there were other statutes defining double jeopardy that would apply. **Diana Liebinger-Koch** said there is no other statute needing to be amended.

**SEN. GRIMES** asked if this was offering violation of probation to not be put into double jeopardy. **Diana Liebinger-Koch** explained the courts have interpreted this to mean two different things. She said they would not be able to try someone twice for the same criminal act and they could not inflict multiple punishments on someone for the same offense.

**SEN. GRIMES** asked if this would not violate the individual's rights in other sections on the same grounds. **Diana Liebinger-**

**Koch** said she would agree with this and said this is not another punishment.

**SEN. GRIMES** asked why language was being changed. **REP. NEWMAN** said there was no legal significance and they were trying to be consistent within the provisions of the bill.

**SEN. GRIMES** asked if there was any unintended consequences dealing with misdemeanors. **REP. NEWMAN** explained Montana statutes dealing with felons and how an unintended consequence does occur.

**SEN. GRIMES** asked about retroactive applicability and if it would apply to these cases. **REP. NEWMAN** said the intention of the bill is to make these work and they are working within the existing punishment the offenders are subjected to.

**SEN. GRIMES** asked about the time served. **REP. NEWMAN** said that time served on probation is more often credited as time served on the sentence.

**Closing by Sponsor:**

**REP. BRAD NEWMAN, HD 38, BUTTE**, summarized the conditions being modified and added. He mentioned the conflicts created within the statutes and how the legislature needs to offer guidance as to modify these conditions without violating existing sentencing.

**ADJOURNMENT**

Adjournment: 12:30 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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CECILE TROPILA, Secretary

LG/CT

**EXHIBIT** (jus58aad)